

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY CASIANO,

Plaintiff,

v.

WARDEN KISA SMALLS; CORRECTIONAL
OFFICER RUCKER, # 2398; CAPT.
THEAGERE, # 4016; CORRECTIONAL
OFFICER K. LUTON, # 5144;
DEPARTMENT OF CORRECTION; NEW
YORK CITY, CORRECTIONAL OFFICER
FOOT, #5509, and CAPTAIN THEAGRE,
#1851,

Defendants.

19 Civ. 5226 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

The Court is in receipt of Plaintiff's letter, docketed December 9, 2019 (Dkt. #40), notifying the Court that Plaintiff has been transferred to a new facility and may not be able to attend the initial pretrial conference scheduled for December 17, 2019. Accordingly, that conference is hereby ADJOURNED to January 7, 2020, at 11:00 a.m.

It is further ORDERED that at the appointed date and time for the conference, the Warden or other official in charge of the Auburn Correctional Facility, produce prisoner Anthony Casiano, Identification No. 19-A-2659, at a suitable location within the Auburn Correctional Facility equipped with a telephone, for the purpose of participating by telephone in the conference with the Court and defense counsel in the above referenced matter. If this time and

date presents an inconvenience, the Warden or the Warden's designee should promptly inform Chambers by calling (212) 805-0290.

Counsel for Defendants must (1) transmit this Order to the Warden forthwith; (2) contact the Auburn Correctional Facility forthwith to arrange the call, and to determine the telephone number at which Plaintiff will be reachable at the above time and date; and (3) telephone the Court with Plaintiff on the line at the time and date of the conference.

At the appointed time, the parties shall call (888) 363-4749 and enter access code 6624801. Please note, the phone conference line will not be available prior to 11:00 a.m.

The Court is also in receipt of Plaintiff's renewed application for the Court to request pro bono counsel (Dkt. #37), after the Court denied an earlier request for the same on July 15, 2019 (Dkt. #8). The factors to be considered in ruling on an indigent litigant's request for counsel include the merits of the case, Plaintiff's efforts to obtain a lawyer, and Plaintiff's ability to gather the facts and present the case if unassisted by counsel. *See Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989); *Hodge v. Police Officers*, 802 F.2d 58, 60-62 (2d Cir. 1986). Of these, the merits are "[t]he factor which command[s] the most attention." *Cooper*, 877 F.2d at 172. The Court notes that Plaintiff has taken the step of calling attorneys to see if they would represent him. However, the Court concludes that it remains too early in the proceedings for it to assess the merits of the action. The parties have yet to appear for an initial

pretrial conference and no discovery has occurred. Accordingly, Plaintiff's motion for counsel is denied without prejudice to renewal at a later date.

SO ORDERED.

Dated: December 10, 2019
New York, New York

A handwritten signature in blue ink, reading "Katherine Polk Faila".

KATHERINE POLK FAILLA
United States District Judge

Sent by First Class Mail to:
Anthony Casiano
NYSID: 02010485Z
DIN No. 19A2659
Auburn Correctional Facility
P.O. Box 618
Auburn, NY 13024